IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 21738 of 2007(K)

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OS.291/2002 of II ADDL.SUB COURT,KOZHIKODE

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PETITIONER:

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1. P.M. PRAMOD, S/O. LATE P.M.N.KURUP,
   AGED 39 YEARS, PUTHIYAMADATHIL HOUSE,IRINGAL AMSOM DESOM, AYANIKKADU P.O., KOYILANDY TALUK, KOZHIKODE DIST.

2. SHEENNA, W/O. PRAMOD,
   AGED 30 YEARS, 'VISMAYAM', NELLIKODE AMSOM,DESOM, KOZHIKODE TALUK, KOZHIKODE DIST.

BY ADV. SRI.P.R.SREEJITH

RESPONDENTS:

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N.V. PARAMESWARAN, S/O. RAJAN,
AGED 35 YEARS, DARSHANA, KOTTOOLI AMSOM, DESOM, KOZHIKODE TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE PLAINT IN O.S.291/2002 OF THE 11ND ADDITIONAL SUBORDINATE JUDGE, KOZHIKODE

EXT.P2- TRUE COPY OF WRITTEN STATEMENT FILED BY THE 1ST PETITIONER IN O.S.291/2002 BEFORE THE 11ND ADDITIONAL SUBORDINATE JUDGE, KOZHIKODE

EXT.P3- TRUE COPY OF COMMON ORDER IN I.A.4314/06 AND I.A.4228/06 IN O.S.217/03 AND IN I.A.4310/06 IN O.S.291/2002 DATED 29.6.2007 OF THE IIND ADDITIONAL SUB. JUDGE, KOZHIKODE

(TRUE COPY)

P.A TO JUDGE

**M.N.KRISNAN, J.**

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W.P.(C). 21738/2007

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Dated this 2nd day of August, 2007

**JUDGMENT**

This writ petition is filed against the common order passed by the learned Subordinate Judge, Kozhikode, in I.A. Nos. 4228/2006, 4310/2006 and 4314/2006. I.A. Nos. 4228/2006 and 4314/2006 are the applications filed by D2 and D1 respectively in O.S.217/2003 to set aside the ex parte decree and I.A.4310/2006 is an application filed by the sole defendant in O.S.291/2002 to set aside the ex parte decree. The Court below after an elaborate consideration allowed each of the applications on payment of cost of Rs.5,000/- and directed the defendant in O.S.291/2002 to deposit Rs.50,000/- as security. It is against those decisions the defendants have preferred this writ petition.

2. The grievance of the learned counsel is to the effect that in the very same case for setting aside the ex parte decree passed against the husband and wife, the Court below has ordered a cost of Rs.5,000/- each.

However, according to him there is difficulty for him to raise money to furnish security as ordered by the Court below. As far as the first grievance is concerned there appears to be some force. In the very same suit for setting aside the ex parte decree against two defendants who are husband and wife, Court should not have imposed such a huge cost of Rs.10,000/-. Therefore, I feel in the interest of justice the said cost can be modified and reduced to Rs.5,000/- whereby Rs.2,500/- has to be paid as cost by each of the defendants in those applications. So far as I.A.4310/2006 is concerned, it is only reasonable which requires only confirmation. The other point is regarding security. Court below has ordered furnishing of security for Rs.50,000/- only to make it sure that there is some sort of security for the plaintiff who had filed the suit. It is not the amount which is ordered to be withdrawn by the plaintiff and it cannot be done so also. Therefore, if there is any difficulty for the defendant in O.S.291/2002 for depositing a cash security of Rs.50,000/- it will be

sufficient if the defendant furnishes security for a sum of Rs.50,000/- to the satisfaction of the Court below after hearing the plaintiff in the case as well. To this extent, the orders are modified and writ petition is disposed of accordingly.

3. There will also be a direction to the learned Subordinate Judge to dispose of the matter as expeditiously as possible.

**M.N.KRISHNAN,**
**JUDGE**

mrcs